Heng Choon Lee & Anor v Wong Choon Ho

HIGH COURT (IPOH) — ORIGINATING SUMMONS NO AA-24F-21–04 OF 2018
MOHD RADZI JC
8 FEBRUARY 2019

Civil Procedure — Rules of Court 2012 — O 92 r 4 — Application by plaintiffs for court to grant order to allow DNA sample to be taken from child — Application made under O 92 r 4 of the Rules of Court 2012 ('ROC') — Inherent jurisdiction — Whether plaintiffs' application contravened defendant's legal rights for custody, care and control of child — Whether plaintiffs' application an abuse of process — Whether O 92 r 4 of the ROC applicable — Whether plaintiffs' application was for best interest of child

The plaintiffs had filed an application in encl 1 for, inter alia, the order that the first plaintiff be declared as the biological father of a four-year-old child ('WJY') and be granted guardianship, custody, care and control of WJY. Before the hearing of encl 1, the plaintiffs filed the present action ('encl 9') under O 92 r 4 of the Rules of Court 2012 ('the ROC'), for the court to grant an order to allow DNA sample to be taken from WJY to enable that DNA sample to undergo DNA tests for the purpose of determination and confirmation of the status of the first plaintiff as the biological father of WJY. In support of encl 9, the plaintiffs submitted that: (a) the main purpose of this application was to provide proof that the first plaintiff was the biological father of WJY which in turn would assist the court in determining encl 1; and (b) the court should allow encl 9 as it would be in the interest of WJY to know the real identity of his biological father at the earliest possible opportunity to avoid future negative effects should he come to know about it later. The defendant submitted that the plaintiffs' application in encl 9 could not be allowed as it would contravene her legal rights by virtue of the court's order of 6 March 2017 which granted her the custody, care and control over WJY.

Held, dismissing the application with cost of RM2,000:

(1) Although the defendant had been granted with the custody, care and control over WJY, it did not restrict the court to allow the application in encl 9, if it deemed fit and appropriate to do so, on such terms and conditions it so ordered, and taking into consideration the interest of the child as the paramount consideration (see paras 18).

(2) The court found it objectionable that the plaintiffs had deemed it fit to manipulate a court process through encl 9 for the direct benefit of their

pending substantive application in encl 1. Enclosure 9, having been filed after encl 1, could embarrass the court because, if the application was allowed, whatever outcome of the DNA tests would prejudge encl 1. This tantamount to abuse of process. On this ground alone, the court would dismiss encl 9 (see paras 20–22).

(3) The inherent jurisdiction under O 92 r 4 of the ROC was a procedural rule. It was not intended to alter substantive rights. The application pertaining to the taking of one's DNA samples was a substantive application affecting one's substantive rights and it was not procedural in nature. Order 92 r 4 of the ROC was therefore inapplicable to application such as the one in encl 9 (see paras 26–27 & 47).

(4) At such tender age, WJY would not be able to comprehend the purpose of the taking of DNA sample and also the consequences, reach and meaning of the outcome of the DNA results. This in itself defeated the plaintiffs' argument that this application would enable WJY to know his true parents as early as possible (see para 38).

[Bahasa Malaysia summary

Plaintif-plaintif telah memfailkan permohonan dalam lampiran 1 untuk, antara lain, perintah agar plaintif pertama diisytiharkan sebagai bapa kandung kepada kanak-kanak berumur empat tahun ('WJY') dan diberi hak penjagaan, penjaga, jagaan dan kawalan WJY. Sebelum perbicaraan lampiran 1, plaintif-plaintif telah memfailkan tindakan ini ('lampran 9') di bawah A 92 k 4 Kaedah-Kaedah Mahkamah 2012 ('KKM'), agar mahkamah memberikan perintah untuk membenarkan sampel DNA diambil daripada WJY bagi membolehkan sampel DNA tersebut menjalani ujian DNA bagi tujuan menentukan dan mengesahkan status plaintif pertama sebagai bapa kandung WJY. Bagi menyokong lampiran 9, plaintif-plaintif berhujah bahawa: (a) tujuan utama permohonan ini adalah untuk memberikan bukti bahawa plaintif pertama adalah bapa kandung WJY yang seterusnya akan membantu mahkamah menentukan lampiran 1; dan (b) mahkamah patut membenarkan lampiran 9 kerana ia adalah demi kepentingan WJY untuk mengetahui identiti sebenar bapa kandungnya pada peluang yang seawal mungkin bagi mengelakkan kesan negatif selanjutnya sekiranya dia mengetahui tentangnya kemudian. Defendan berhujah bahawa permohonan plaintif-plaintif dalam lampiran 9 tidak boleh dibenarkan kerana ia bertentangan dengan hak undang-undangnya menurut perintah mahkamah 6 Mac 2017 yang memberikannya hak penjagaan, jagaan dan kawalan ke atas WJY.

Diputuskan, menolak permohonan dengan kos RM2,000:

(1) Walaupun defendan telah diberikan hak penjagaan, jagaan dan kawalan ke atas WJY, ia tidak menghalang mahkamah daripada membenarkan permohonan dalam lampiran 9, jika difikirkannya sesuai dan wajar

untuk berbuat demikian, berdasarkan terma dan syarat ia diperintahkan, dan mengambil kira kepentingan kanak-kanak itu sebagai pertimbangan utama (lihat perenggan 18).

(2) Mahkamah mendapati ia boleh dibantah bahawa plaintif-plaintif telah menganggap ia sesuai untuk memanipulasi proses mahkamah melalui lampiran 9 untuk faedah langsung permohonan substantif mereka dalam lampiran 1 yang masih belum selesai. Lampiran 9, yang telah difailkan selepas lampiran 1, boleh memalukan mahkamah kerana, jika permohonan itu dibenarkan, apa-apa hasil daripada ujian DNA itu akan menjejaskan lampiran 1. Ini sama seperti suatu penyalahgunaan proses. Atas alasan ini sahaja, mahkamah menolak lampiran 9 (lihat perenggan 20–22).

(3) Bidang kuasa sedia ada di bawah A 92 k 4 KKM adalah suatu rukun prosedur. Ia tidak bertujuan untuk mengubah hak-hak substantif. Permohonan berkaitan pengambilan sampel DNA seseorang adalah suatu permohonan substantif yang menjejaskan hak substantif seseorang dan ia bukan bersifat prosedur. Aturan 92 k 4 KKM dengan itu tidak boleh terpakai kepada permohonan sepertimana dalam lampiran 9 (lihat perenggan 26–27 & 47).

(4) Pada umur begitu muda, WJY tidak memahami tujuan pengambilan sampel DNA dan juga akibatnya, jangkauan dan maksud hasil keputusan DNA itu. Ini dengan sendirinya telah menggagalkan hujah plaintif-plaintif bahawa permohonan ini akan membolehkan WJY mengetahui ibubapa kandungnya seawal yang mungkin (lihat perenggan 38).]

Cases referred to

Abdul Razak Ahmad v Majlis Bandaraya Johor Bahru [1995] 2 MLJ 287, HC (refd)

Chip Chong Sawmill Co Sdn Bhd & Ors v Chai Khiun Fui [1978] 2 MLJ 24, FC (refd)

H and A (children), Re [2002] EWCA Civ 383, CA (refd)

Indah Desa Saujana Corp Sdn Bhd & Ors v James Foong Cheng Yuen, Judge, High Court Malaya & Anor [2008] 2 MLJ 11, CA (refd)

Johnson v Gore Wood & Co (a firm) [2002] 2 AC 1, HL (refd)

Lee Lai Cheng (suing as the next friend of Lim Chee Zheng and herself) v Lim Hooi Teik [2017] 10 MLJ 331, HC (folld)

Lee Lai Ching (as the next friend of Lim Chee Zheng and on behalf of herself) v Lim Hooi Teik [2013] 4 MLJ 272, HC (distd)

Manson v Vooght [1999] BPIR 376, CA (refd)

Pacific Centre Sdn Bhd v United Engineers (M) Ltd [1984] 2 MLJ 143 (refd)

Peter James Binsted v Juvencia Autor Partosa [2000] 2 MLJ 569; [2000] 2 CLJ 906, HC (refd)

Re D (Paternity) [2006] EWHC 3545 (Fam); [2007] 2 FLR 26, HC (consd)
Tan Beng Sooi v Penolong Kanan Pendaftar (United Merchant Finance Bhd, intervener) [1995] 2 MLJ 421, HC (refd)

Legislation referred to

Federal Constitution art 8
Penal Code s 323
Rules of Court 2012 O 14A, O 92 r 4
Family Law Act 1969 [UK]
Family Law Reform Act 1969 [UK]

CS Ong (Lydia Wong with him) (Siong & Rita) for the plaintiffs.
KY Chong (Chong Hui Yean with him) (HL Lee & Co) for the defendant.

Mohd Radzi JC:

APPLICATION

[1] The plaintiffs filed a notice of application as in encl 9 for this court to grant an order to allow DNA sample to be taken from a four year old child, WJY, to enable that DNA sample to undergo DNA tests for the purpose of determination and confirmation of the status of the first plaintiff as the biological father of WJY.

[2] Upon hearing the submission of learned counsels for both parties, and having considered the affidavits, facts and the law, this court dismissed the application with costs.

[3] The plaintiffs now appeal against my decision and I shall provide the grounds of my judgment as below.

FACTS

[4] The first plaintiff and the second plaintiff are husband and wife, married since 1994.

[5] During the subsistence of the said marriage between the first and second plaintiffs, the first plaintiff had an extra-marital affair with Wong Choon Yee ('CY'). That affair went on for a period of about 20 years.

[6] As a result of that extra-marital affair, WJY, a boy, was born on 3 September 2014.

[7] CY is the younger sister of the second plaintiff and the defendant.

[8] CY died on 14 February 2016.

[9] Vide CY's will dated 6 February 2016 (see exh WCH2 to the affidavit of Wong Choon Ho affirmed on 27 June 2018) the defendant was appointed by CY as guardian to WJY.

[10] Vide an order of the Ipoh High Court dated 6 March 2017 (see exh HCL4 to the affidavit of Heng Choon Lee affirmed on 26 April 2018), the defendant was granted the right of custody, control and care over WJY.

[11] Vide an originating summons as in encl 1 filed on 28 April 2018, the plaintiffs are seeking from this court that:

(a) the first plaintiff shall be declared as the biological father of WJY;

(b) the first plaintiff is granted the guardianship over WJY;

(c) the plaintiffs to be granted custody, care and control over WJY, or alternatively to be granted with right of access to WJY as specifically pleaded in para 5 of the OS; and

(d) the defendant is granted with reasonable right of access to WJY.

[12] Before the hearing of encl 1, the plaintiffs filed the current encl 9.

FINDING

Rape

[13] Wong Lan Hin, the father to the second plaintiff, the defendant and the deceased CY, in his affidavit affirmed on 27 June 2018 averred that her daughter CY informed him that she was raped by the first plaintiff.

[14] No further action was taken against the first plaintiff on this matter simply for the fact that the first plaintiff is the husband to the second plaintiff, who is CY's sister and Wong Lan Hin's another daughter.

[15] The first plaintiff in his affidavit affirmed on 13 July 2018 denied the allegation of rape as averred by Wong Lan Hin and maintained that he had a long-standing extra-marital affair with CY and that their sexual relations had been consensual.

[16] This court ruled that the issue of rape is preposterous, to say the least. The incident, if ever happened, would be regarded as rape only if the first plaintiff had been charged and found guilty, convicted and sentenced by a court of law for that offence. CY, the alleged rape victim, has died almost three

years ago. This issue should never have been raised. In actual fact, it had only succeeded in creating some form of negative aspersions on the very person making the allegation.

Court estopped from granting any other orders when a custody order is in force?

[17] The defendant contended in her affidavit affirmed on 6 August 2018 that the plaintiff's application cannot be allowed by this court as it would contravene her legal rights by virtue of this court's order of 6 March 2017 which granted her the custody, care and control over WJY. The defendant appears to have the impression that as the person with the right to custody, only she, and no one else, not even a court, could decide on anything pertaining to WJY. The right to custody would include her right to determine whether or not to allow the DNA specimens to be taken from WJY.

[18] It is the finding of this court that the defendant's argument is wrong. Although the defendant has been granted with the custody, care and control over WJY, it does not restrict this court to allow this application, if it deems fit and appropriate to do so, on such terms and conditions it so ordered, and taking into consideration the interest of the child as the paramount consideration.

DNA result would determine fate of the plaintiffs' application

[19] Paragraphs 4–7 of the affidavit deposed by Heng Choon Lee, the first plaintiff, and affirmed on 13 June 2018, in support of the plaintiffs' application averred that the main purpose of this application is to provide proof that the first plaintiff is the biological father of WJY. This would in turn assist this court in determining the plaintiff's application in encl 1 for the first plaintiff to be declared as the biological father of WJY. The said DNA result would also facilitate subsequent registration process of the first plaintiff as the biological father of WJY at the National Registration Department. The counsel for the plaintiffs had also argued that if this application is allowed and the DNA results show that the first plaintiff is not the biological father of WJY, the plaintiffs would withdraw their application in encl 1.

[20] This court found it objectionable that the plaintiffs deemed it fit to manipulate a court process through this application for the direct benefit of their pending substantive application. Had this application been filed first in sequence preceding the application in encl 1, it would have reflected a different picture altogether to this court. For if it had been so, then on the assumption that this court allows this application, whatever result or outcome of the DNA tests could be filed as part of the supporting document for consideration of the court in determining the application in encl 1. But as this application is filed

A after the filing of the application in encl 1, this application could embarrass the court. This is because if this application is allowed, whatever result or outcome of the DNA tests would certainly prejudge encl 1, particularly the plaintiffs' prayer for the declaration of the first plaintiff as the biological father of WJY.

B **[21]** The Court of Appeal in *Indah Desa Saujana Corp Sdn Bhd & Ors v James Foong Cheng Yuen, Judge, High Court Malaya & Anor* [2008] 2 MLJ 11 decided that the categories of abuse of process of court are never closed and will certainly proliferate due to the myriad circumstances available from the factual background found in each particular case. This proposition found its root in
C the House of Lord decision of *Johnson v Gore Wood & Co (a firm)* [2002] 2 AC 1, when Lord Bingham of Cornhill referred to *Manson v Vooght* [1999] BPIR 376 (CA) at pp 388–389, where May LJ lamented, inter alia, that 'Abuse of process is a concept that defies precise definition in the abstract'. The ground
D propounded by the plaintiffs as stated above falls squarely and perfectly within this realm.

[22] This court ruled that this particular ground supporting the plaintiffs' application could result in an embarrassment to this court as explained earlier.
E It tantamount to an abuse of the court process as envisaged by the Court of Appeal in *Indah Desa Saujana Corp Sdn Bhd*. On this ground alone, this court would dismiss this application in line with the decision in *Chip Chong Sawmill Co Sdn Bhd & Ors v Chai Khiun Fui* [1978] 2 MLJ 24 where the Federal Court held that the court has inherent jurisdiction to dismiss or stay or otherwise
F nullify all actions or proceedings which are shown to its satisfaction to be vexatious or oppressive or constitute an abuse of process.

Order 92 r 4 of the Rules of Court 2012

G **[23]** It is trite that currently there is no specific law in Malaysia to enable this court to grant the order as prayed by the plaintiffs to compel WJY to undergo DNA test to achieve the purpose as stated in the application. This is conceded by both parties to the application.

H **[24]** The plaintiffs therefore are relying their application mainly on this court's inherent powers under O 92 r 4 of the Rules of Court 2012 ('the ROC').

[25] The purpose and scope of O 92 r 4 of the ROC was aptly explained by
I Edgar Joseph Jr J (as he then was) in *Pacific Centre Sdn Bhd v United Engineers (M) Ltd* [1984] 2 MLJ 143 where His Lordship said:

> ... the inherent jurisdiction of the court includes all the powers that are necessary to fulfil itself as a court of law; to uphold, protect and fulfil the judicial function of administering justice according to law in a regular, orderly and effective manner.

[26] The court will not apply its inherent powers under this order to all cases indiscriminately but is duty-bound to determine the issues in dispute so far as they affect the rights and interests of the parties: *Abdul Razak Ahmad v Majlis Bandaraya Johor Bahru* [1995] 2 MLJ 287. In *Tan Beng Sooi v Penolong Kanan Pendaftar (United Merchant Finance Bhd, intervener)* [1995] 2 MLJ 421, the court held that the inherent jurisdiction under O 92 r 4 is a procedural rule and is not intended to alter substantive rights.

[27] It is this court's finding that the law is trite that O 92 r 4 is inapplicable in an application such as in encl 9. The application pertaining to the taking of one's DNA sample is a substantive application affecting one's substantive rights. It is not procedural in nature. More so when the application involves the taking of DNA sample from a four year old child, not purely for the benefit and interest of the child but as explained in the earlier paragraphs, with the intent of ensuring the success of the plaintiffs' substantive application in encl 1. This court cannot exercise its inherent powers under O 92 r 4 of the ROC for such purpose.

Decision of Lee Lai Ching v Lim Hooi Teik

[28] The plaintiffs had relied heavily on the decision of the High Court in *Lee Lai Ching (as the next friend of Lim Chee Zheng and on behalf of herself) v Lim Hooi Teik* [2013] 4 MLJ 272 in support of its application. In that case, the plaintiff who is the natural mother of a child, LCZ, filed an action against the defendant to determine the defendant's paternity of the child. This action was taken after the plaintiff's failed attempts to get the defendant to acknowledge that LCZ was fathered by him. The defendant had also refused to undergo DNA test to determine paternity. The issue before Zamani J (as His Lordship then was) was whether the court could compel the defendant to undergo the DNA test. The defendant invoked a decision of KC Vohrah J in *Peter James Binsted v Juvencia Autor Partosa* [2000] 2 MLJ 569; [2000] 2 CLJ 906 that the law does not allow for a person to be compelled to undergo a test to ascertain paternity when the DNA test involve the taking of specimen, as such taking of specimen without the person's consent amount to hurt under s 323 of the Penal Code.

[29] Zamani J allowed the plaintiff's application when he construed that the order for DNA testing does not tantamount to hurt under s 323 of the Penal Code because the mens rea is to determine paternity. Zamani J also applied the provision of the International Convention on the Rights of the Child, which is legally binding on Malaysia as Malaysia had acceded to it, and concluded that 'it is in the best interest of the minor that the defendant be ordered to undergo DNA testing to determine the paternity of the minor'.

[30] This court observed that the Court of Appeal had reversed Zamani J's decision, albeit mainly on the ground that Zamani J had erred in deciding the issue pursuant to O 14A of the ROC when the existence of the alleged intimate relationship between the plaintiff and the defendant should be decided first through a full hearing instead of a summary trial. Zamani J's decision is thus no more good law.

[31] Even if this court were to apply the principle in *Lee Lai Ching*, it would be a misjudgment. Zamani J decided to compel a purported father to undergo DNA test, not the child as in this application before me currently. This distinguishing fact alone would make the decision of Zamani J inapplicable to this application.

[32] The case was retried, as ordered by the Court of Appeal. Lim Choong Fong JC (as he was then) in *Lee Lai Cheng (suing as the next friend of Lim Chee Zheng and herself) v Lim Hooi Teik* [2017] 10 MLJ 331 ('2017 Lee Lai Ching') dealt with some of the key issues as follows:

(a) whether court could utilise inherent jurisdiction or power under O 92 r 4 of the ROC to compel alleged father to undergo DNA test;

(b) whether the Deoxyribonucleic Acid (DNA) Identification Act 2009 ('the DNA Act') is applicable to civil proceedings and thus could compel the defendant to undergo DNA test; and

(c) whether art 8 of the Federal Constitution extends to right of minor to know his/her true identity.

[33] The court held that it did not have the power to order the defendant to undergo DNA testing whether through the taking of blood, intimate or non-intimate samples even where hurt would not be inflicted on to the person, based on the following grounds:

(a) it is plain that the DNA Act has no application to civil disputes;

(b) art 8 of the Constitution was irrelevant to the present dispute because it does not confer the right to pedigree, such as the right of the minor to know his or her true identity and to have possibility of contact with each natural paren; and

(c) the court's inherent jurisdiction and power is a limited one to prevent injustice or to prevent abuse of process of the court. Order 92 r 4 of the Rules of Court 2012 is only defensive in nature to abate procedural injustice. In other words, the inherent power cannot be utilised to invoke or facilitate a substantive right, albeit unjustly denied.

[34] I agree and adopt the findings of His Lordship Lim Choong Fong in

2017 Lee Lai Ching particularly on his findings pertaining to the non-existence of any specific legislation in Malaysia that could be used to compel the taking of DNA sample, the irrelevance of art 8 of the Federal Constitution, and the non-application of O 92 r 4 of the ROC to this kind of application.

An unusual approach adopted by the UK court

[35] I was initially attracted to apply the method employed by Hedley J in the UK Family Division Court decision in *Re D (Paternity)* [2006] EWHC 3545 (Fam); [2007] 2 FLR 26, and the decision of Thorpe LJ in the UK Court of Appeal decision of *H and A (children), Re* [2002] EWCA Civ 383, as cited in the submissions of the counsel for the plaintiffs. But I realised such application would be legally untenable in Malaysia at this juncture.

[36] Both cases were referring to specific provisions of the UK Family Law Reform Act 1969 and the Family Law Act 1969 respectively, which has specific provisions on the taking of bodily samples from persons below the age of 16 years, without that person's consent, with order of court, or if the court considers it would be in the best interest of that child to give such order. Apart from that, I found that Hedley J in *Re D (Paternity)* chose to adopt what His Lordship termed as a 'slightly unusual approach'. His Lordship gave an order that the taking of sample for the minor is allowed but to be stayed without limit of time, and with liberty to restore. This stay, according to His Lordship, is to remove the pressure on the minor to undergo the DNA test at that material time. The DNA test should and could be done once that child choses to do so, and the test would be carried out once the court determined that it is in his best interest to do so.

It is in WJY's interest to know the identity of his biological father at the earliest opportune

[37] The first plaintiff, in para 9 of his affidavit, affirmed on 13 July 2018 stated further that this court should allow this application as it would be in the interest of WJY to know the real identity of his biological father at the earliest possible opportunity and to be informed on the background of his parents at this young age. This would enable WJY to accept the facts and could avoid future negative effects should he come to know about it later.

[38] I agree with the argument of the plaintiffs only to the extent that it would be in the best interest of WJY to know for certain the real identity of his biological father. But assuming if this court allow this application and the DNA sample is taken from WJY instantaneously, how does that serves the best interest of WJY? Firstly, at such tender age, WJY would not be able to comprehend the purpose of the taking of his DNA sample. Secondly, again at

such tender age, whatever the outcome of the DNA results, WJY would not be in the position to understand its consequences, reach and meaning. This in itself defeats the plaintiffs' argument that this application would enable WJY to know his true parents (in this case his biological father) as early as possible.

[39] My hands are tied and I cannot adopt similar 'unusual approach' as employed by Hedley J in *Re D (Paternity)* due to the reasons as I had explained earlier.

Convention on the Rights of the Child ('CRC')

[40] As the CRC was mentioned by Zamani J in *Lee Lai Ching*, I intent to touch briefly on this important issue as it has direct relevance to this application.

[41] As a state party to the CRC, the provisions of the CRC is legally binding on Malaysia, except for articles 2, 7, 14, 28 paras 1(a) and 37, which Malaysia had entered its reservations.

[42] Articles 7 and 8 of the CRC are amongst the provisions that are directly relevant to the issue before this court. These two articles are reproduced as below:

Article 7:

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8:

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.

[43] In the context of WJY, article 7, among others, guarantees WJY the right to know the identity of his biological father. Whereas Article 8 protects WJY's right to preserve his identity, including his nationality, name and family relations, without unlawful interference.

[44] Although Malaysia had placed its reservation on article 7, international law norms and practices dictate that the Government of Malaysia cannot continue to have policies and laws that run contrary to the intent, purpose and object of the CRC, including the reserved article 7. The Government of Malaysia is legally obliged to adopt administrative and legislative measures to implement fully the provisions of the CRC to which Malaysia had not placed its reservations, including article 8.

[45] As there is currently a lacunae in Malaysian law dealing with the taking of DNA samples for purposes of determination of the biological parent of a child, this court recognises the need for the relevant authorities in the Government of Malaysia to conduct a study to determine the appropriateness of promulgating such laws, if it had not done so. The relevant legislations in other jurisdictions, including the UK and Ireland, could be used as guides.

[46] Existence of such legislative mechanism would elevate Malaysia's compliance stature of the CRC. At the same time, application such as the one before this court now could be dealt with in a much definitive manner once such laws are in place.

CONCLUSION

[47] There is currently no legal provision in Malaysia that would enable this court to entertain application such as the one before this court now. Order 92 r 4 of the ROC is inapplicable for application such as the one in encl 9. In the final analysis, it is not in the best interest of WJY for this court to allow this application.

[48] Based on all of the above consideration, I dismissed the plaintiffs' application in encl 9 with costs at RM2,000.

Application dismissed with cost of RM2,000.

Reported by Fadzilah Nasir